

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
PAYNE, et al., : Docket #20cv8924  
 : 1:20-cv-08924-CM  
 :  
 Plaintiffs, :  
 :  
 - against - :  
 :  
 DE BLASIO, et al., : New York, New York  
 : June 24, 2021  
 Defendants. :  
 :  
 ----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL W. GORENSTEIN,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Payne Plaintiffs: NEW YORK CIVIL LIBERTIES UNION  
BY: MOLLY BICKLEN, ESQ.  
125 Broad Street  
New York, New York 10004

For Sow Plaintiffs: GIDEON ORION OLIVER, ESQ.  
277 Broadway, Suite 1501  
New York, New York 10007

For Sierra Plaintiffs: RICKNER PLLC  
BY: ROB RICKNER, ESQ.  
14 Wall Street, Suite 1603  
New York, New York 10005

For Wood Plaintiffs: KAUFMAN LIEB LEBOWITZ & FRICK LLP  
BY: ALISON FRICK, ESQ.  
10 E. 40<sup>th</sup> Street, Suite 3307  
New York, New York 10016

Transcription Service: Carole Ludwig, *Transcription Services*  
155 East Fourth Street #3C  
New York, New York 10009  
Phone: (212) 420-0771  
Email: Transcription420@aol.com

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APPEARANCES (CONTINUED):

For Yates Plaintiff: STOLL, GLICKMAN & BELLINA, LLP  
BY: ANDREW STOLL, ESQ.  
300 Cadman Plaza West, 12<sup>th</sup> Floor  
Brooklyn, New York 11201

For Plaintiff People NEW YORK STATE OFFICE OF  
of the State of New THE ATTORNEY GENERAL  
York: BY: LILLIAN MARQUEZ, ESQ.  
28 Liberty Street  
New York, New York 10005

For Defendants: NEW YORK CITY LAW DEPARTMENT  
BY: DARA WEISS, ESQ.  
BRACHAH GOYKADOSH, ESQ.  
ANTHONY DISENSO, ESQ.  
RACHEL KAUFMAN, ESQ.  
100 Church Street  
New York, New York 10007

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: Payne v. De Blasio, et al., 20cv8924.  
Counsel, please state your names and appearances for the  
record starting with plaintiffs.

MS. MOLLY BICKLEN: This is Molly Bicklen of the  
New York Civil Liberties Union Foundation and co-counsel  
for the Payne plaintiffs.

MR. GIDEON OLIVER: Gideon Oliver co-counsel for  
the Sow plaintiffs.

MR. ROB RICKNER: Rob Rickner, co-counsel for the  
Sierra plaintiffs, good afternoon.

MS. ALISON FRICK: Good afternoon, this is Alison  
Frick from Kaufman Lieb Lebowitz & Frick for the Wood  
plaintiffs.

MR. ANDREW STOLL: And good afternoon, this is  
Andrew Stoll for plaintiff Cameron Yates.

MS. LILLIAN MARQUEZ: Good afternoon, this is  
Lillian Marquez of the AG's office on behalf of for  
plaintiffs for People v. City of New York.

THE COURT: Who's here for defendants?

MS. DARA WEISS: Good afternoon, this is Dara  
Weiss for the York City Law Department for defendants.

MS. BRACHAH GOYKADOSH: Brachah Goykadosh also on  
behalf of defendants. Good afternoon, Your Honor.

MR. ANTHONY DiSENSO: Anthony DiSenso also on

1  
2 behalf of the defendants.

3 MS. RACHEL KAUFMAN: Rachel Kaufman also on  
4 behalf of defendants.

5 THE COURT: Okay, who's going to be speaking for  
6 the plaintiffs today?

7 MS. MOLLY BICKLEN: Your Honor, this is Molly  
8 Bicklen from the New York Civil Liberties Union Foundation.  
9 I'll be speaking on behalf of the plaintiffs to address  
10 defendants' failure to produce documents in these  
11 consolidated cases.

12 MR. OLIVER: And, Your Honor, Gideon Oliver, co-  
13 counsel, and so I'm prepared to speak about the  
14 interrogatories piece.

15 THE COURT: I think we have - first, let me  
16 start by saying we're being recorded, but any dissemination  
17 of this proceeding of copying of any kind is strictly  
18 prohibited. A transcript will presumably be ordered by the  
19 parties. And I should remind attorneys that if they're not  
20 speaking, they should keep themselves on mute.

21 I think we have sort of three projects for this  
22 conference. One is dealing with substantive objections to  
23 the responses to the document requests and the  
24 interrogatories. And when I say substantive, I guess I  
25 would also include complaints about the manner in which

those document requests or interrogatory responses will give information about timing, and if there's complaints about that, what we do about that. The second thing is the plaintiffs' complaints about the information that's been provided by the City about their process which is reflected in the June 21 letter. And then I think the third thing is the requests for what we do going forward in terms of specific orders regarding timing of production.

If after we accomplish that, if someone thinks there's something else we need to do, certainly we'll go around at the end and make sure I didn't fail to cover what we need to accomplish.

Also, I had spoken to Judge McMahon, I just wanted to advise you of information that she had given to me regarding the discovery process which I'll distill and summarize. In essence, she reiterates that she does not believe this litigation should be prolonged. She intends to try the case next year. She wants me to advise her whether any party is being recalcitrant about discovery. She's fully prepared to enter sanctions orders of preclusion against any party who's being recalcitrant about discovery. She expects all parties, especially the City, to devote whatever resources are necessary to getting discovery done in time to meet her schedule. And if it

1  
2 turns out that a particular party is being recalcitrant or  
3 slow walking discovery, she wants it known that she will  
4 entertain a preclusion motion. So I just wanted to make  
5 sure I got that out there and it didn't get lost as we go  
6 later into the conference.

7           Okay, on the issues that I talked about, I'm  
8 prepared to go through the complaints about the responses  
9 to the document requests and the interrogatories both to  
10 the extent that they're substantive and relate to timing.  
11 It's a little bit unusual for me because, you know, because  
12 as I put this on a compressed schedule, I've gotten a  
13 letter from the plaintiffs but I haven't gotten anything  
14 from the defendants. I assume they're prepared to talk.  
15 I'm prepared to try to do this orally. If something comes  
16 up that absolutely has to be in a letter, then, you know, I  
17 can wait a day or two for such a letter. I think would be  
18 to the City's advantage to not have to write a letter and  
19 to present it orally, but if for some reason that's a  
20 problem, I guess I'm willing to hear about it.

21           So, Ms. Bicklen, should we go through your sort  
22 of specific - if we start with the thing which is the, you  
23 know, the complaints about the specific request  
24 interrogatories or should we start with the letter and  
25 whether you got sufficient information in that letter?

MS. BICKLEN: Thank you, Your Honor. We think that they're one of a piece. Most specifically, the problem that plaintiffs have had with defendants' responses is that they keep telling us that they are searching and just to wait and they will provide us something. But it's clear as their June 21 letter that that's illusory. In many cases they merely claimed to have requested the information, in other places it's very clear that they have not even gathered or searched for this information.

And so putting together their second amended responses, which, again, in many cases promises to be looking for things. In other places it says that, you know, issues are burdensome but does quantify that. It's hard to separate out these issues. We're happy to go through it one by one, but we think at the end of the day the most significant problem is that they are not gathering these documents quickly enough, reviewing them and sending them out, and that is just going to be true in response to every single request.

THE COURT: Okay, well, I mean this is your chance to go through some of those issues in depth. I mean I guess one - well, maybe we should do it on a broader scale to start. So, Ms. Weiss, are you speaking for the defendants?



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MS. WEISS: Yes, Your Honor.

THE COURT: I think that your June 21 letter certainly advances the ball on transparency which was my goal from the last conference by giving a good deal of information I didn't have before. But I think on the thing that's most important to the plaintiffs they're still operating in the dark. And I would've thought that there has to be some mechanism whereby you can say we have 5,000 documents, or whatever the number is, that have to be reviewed. We have X number of people reviewing it. It's going to take this much time, and we're going to do it on this schedule. I'm not saying that you could do that definitively with respect to all the documents, but you might know that you have right now 5,000 documents or some number, whatever the number is, and what is the problem telling us what that number is and what it's going to take timing-wise to go through the process that you describe in this letter.

MS. WEISS: Well, Your Honor, I can answer that to some extent, but with your permission I may need - we have two of our e-discovery counsel on the line, Ms. Kaufman and Mr. DiSenso, and I may need them to chime in with some details if that would be okay. I do know that as of right now we probably have about 40,000 documents in our

1  
2 possession that we received from our client. Is that  
3 right, my e-discovery colleagues?

4 MR. DiSENSO: This is Anthony DiSenso. I don't  
5 have the number in front of me, but that sounds roughly  
6 right. I think it's maybe in the neighborhood of 50,000 if  
7 I recall off the top of my head.

8 MS. WEISS: We can confirm that we have that  
9 now. And we're trying to - we don't have a definitive  
10 answer right now on how many people and how the review is  
11 going to do because it is such a huge amount, and we are  
12 working on trying to figure out the most efficient way to  
13 get those documents reviewed.

14 THE COURT: Okay, I mean you made a commitment  
15 at the last conference and I think before that to have it  
16 all done by July 31. So I'm going to hold you to that  
17 commitment, and I guess the question is what is the  
18 impediment to producing them on a rolling basis essentially  
19 in equal, you know, in one, 10,000 a week if that's what it  
20 comes down to, between now and July 31 sort of on an equal  
21 weekly basis.

22 MS. WEISS: There's certainly going to be more  
23 than just these 50,000, that's just what we have in our  
24 possession right now. And as I think we stated either  
25 during the conference last week or it could've been in

1  
2 conversations, in meet and confers, I'm sorry, I don't  
3 remember off the top of my head exactly when it was, this  
4 coming Wednesday we're going to produce the first large  
5 batch of these documents which we committed to do and we  
6 will do. Some of them require less of a level of review  
7 than others. So some of them will be able to go out fairly  
8 quickly; some of them need a more thorough and intense  
9 review because of the nature of the documents. And we're  
10 sliding around personnel and reorganizing who's going to be  
11 doing what on these cases and that takes things from other  
12 cases that our division has, but we're ramping up how we're  
13 going to get these reviews done.

14 THE COURT: How many documents will you produce  
15 on the 30<sup>th</sup>, you must know that?

16 MS. WEISS: I don't have the number in front of  
17 me. Anthony or Rachel, do you have that number from what  
18 we had spoken about earlier?

19 (pause in proceeding)

20 MS. WEISS: I guess not --

21 MS. KAUFMAN: Hi --

22 (interposing)

23 MR. DiSENSO: Sorry, Rachel, you're going to  
24 speak?

25 MS. KAUFMAN: No, go ahead.

MR. DiSENSO: Okay, as far as knowing the number of documents we can produce, that's hard to say. We know the (indiscernible) documents roughly, based on what we have now from the number I stated before, the number of documents that need to be reviewed in some fashion, you know, it's possible some of those may be non-responsive or privileged and wouldn't thus be actually produced.

THE COURT: So I'm not getting a number it sounds like.

MS. KAUFMAN: For this Wednesday, this coming Wednesday as I sit here right now, Your Honor, I'm sorry, I don't have the number but it is significant. It's not a hundred documents. It's a significant number of documents.

THE COURT: Thousands?

MS. KAUFMAN: I believe so, yes.

MS. BICKLEN: Your Honor, this is Molly --

THE COURT: What is the process for - how much personnel - let me back up. There may be vast differences in what's needed to do different kinds of documents, and one of the things that's going on is that the plaintiffs need on the short term basis documents that relate to policing practices more than they need documents relating to particular arrests. Is that - and maybe I should ask plaintiffs if, in fact, that's an appropriate distinction

1  
2 and one that should be pursued.

3 MS. BICKLEN: Your Honor, this is Molly Bicklen  
4 for the Payne plaintiffs. Because they are not a class  
5 case, I would defer to my colleague on the line for Sow,  
6 Gideon, who may be able to address that as well. I think  
7 we want both types of documents, but currently the class  
8 certification is September 1.

9 THE COURT: I understand that, but it's the  
10 expert deadline that I know that is of great concern right  
11 now or least expert disclosure deadline. And I would have  
12 thought that, and I understood from the last letters and  
13 conference, that the documents relating to police practices  
14 are in a sense a priority because that was the subject of a  
15 July 1 deadline. Your class certification deadline's not  
16 till September.

17 MS. BICKLEN: That's right, Your Honor, and  
18 those should not be very difficult to review insofar as  
19 there should be no privilege. They should be able to  
20 identify those and send those out the door and should  
21 already have been able to do so.

22 THE COURT: All right, let me just ask Ms.  
23 Weiss, do you understand the distinction that I'm making  
24 and what is this first batch going to be more arrests, you  
25 know, individual arrest type documents or are they going to

1  
2 be what I'm calling police practice documents?

3 MS. WEISS: I do understand the distinction, and  
4 it's my understanding that it's going to be a mix. A lot  
5 of it is going to be individual arrest type documents which  
6 it's my understanding those play into part of the expert  
7 issues as well in that plaintiffs are concerned with  
8 statistics on race and gender in the arrests. I don't know  
9 what they're asking their experts to opine upon, of course,  
10 but I think there's definitely overlap. But certain things  
11 like training documents and procedural documents, Ms.  
12 Bicklen is right, require not a very high level of review,  
13 and they would be able to go out sooner rather than later.

14 It's just, you know, if I may, it becomes very  
15 difficult because on the several meet and confers that the  
16 parties have had plaintiffs are giving defendants mixed  
17 messages on what they want and when they want it. You  
18 know, it comes down to, of course, they want everything,  
19 and they will - as I mentioned several times, plaintiffs  
20 are going to get and defendants will produce thousands upon  
21 thousands upon thousands of documents. There's very little  
22 that they're asking for that we're not planning on  
23 producing. But it would actually be great, and thank you,  
24 Your Honor, for bringing it up, if plaintiffs were able to  
25 tell us what their real priorities were and perhaps we

1  
2 could do our best to get those documents reviewed and out  
3 first, you know, because as I said, we've been getting  
4 mixed messages in our meet and confers about what they're  
5 looking for right away, what they need right now. So so  
6 this is actually very helpful to defendants.

7 THE COURT: So, Ms. Bicklen, again, I - you  
8 know, it seemed what precipitated the original letter to me  
9 from June 9 was the concern about the expert discovery  
10 deadline and I think to a lesser extent the class  
11 certification deadline since it's months later. Is there a  
12 desire to have them put the police practice/policy  
13 documents to the front burner or is that not a desire?

14 MS. BICKLEN: Your Honor, at this stage almost  
15 everything needs to be on the front burner, and what  
16 defendants refer to as mixed messages I think is attempt at  
17 flexibility on the part of the plaintiffs to work with  
18 defendants to get literally anything. We have gotten so  
19 few documents. We're trying to provide them with  
20 flexibility to produce anything.

21 And so in our letter last night, for example,  
22 we've identified documents that we think should be quite  
23 easy to produce, including everything that already has been  
24 produced to the Department of Investigation and Corporation  
25 Counsel, after action reports and underlying documents, all

1 responsive training documents, and all --

2 THE COURT: Okay, before you go down this road,  
3 the answer I think I'm getting is it's not - making these  
4 distinctions is not what's driving the plaintiffs at this  
5 point. It's just the getting of the documents. So I don't  
6 think I'm going to dwell any longer on trying to figure out  
7 if there's something that should be front loaded. I think  
8 we should go just back to the issue of producing as much as  
9 can be produced as soon as it could be produced.  
10

11 So I'm the one who brought this up. I've now  
12 gotten my answer, and I think we have to move on from the  
13 concept of trying to distinguish between different  
14 categories just being of greater need to the plaintiffs  
15 than others.

16 But let's now talk about what you talked about,  
17 Ms. Bicklen. We have to do it in the context of the  
18 overall production. I guess your contention is that there  
19 are certain things that should be much easier to produce  
20 than others. I don't think the defendants are arguing with  
21 that principle. So I don't know - we're now being told  
22 that by the 30<sup>th</sup> you're going to get thousands of  
23 documents, that there's going to be, there's at least  
24 50,000 documents they're reviewing and that will be  
25 produced or withheld on nonresponsive or privilege grounds



1  
2 by July 31. Tell me how we can best use our time today to  
3 do whatever it is you want to accomplish.

4 MS. BICKLEN: Well, respectfully, Your Honor, I  
5 don't think we (indiscernible) where they wait until July  
6 31 to produce documents.

7 THE COURT: No, I didn't mean to imply that.  
8 No, and I don't think they said that. So I think that's a  
9 straw horse, sorry, straw man. They said they're going to  
10 be producing thousands of documents next week. I'm  
11 prepared to order weekly production because I think the  
12 biweekly production doesn't make any sense because there's  
13 only one, two, three, four, five and a half weeks till this  
14 July 31 deadline. So to the extent you were seeking weekly  
15 production, I think that is important because you really  
16 have waited long enough to get any serious number of  
17 documents, and, you know, for the first time June 30 is  
18 when you're getting a significant number.

19 So I'm with with you on that. Tell me what else.

20 MS. BICKLEN: Thank you, Your Honor. Another  
21 concern we have is made clear by the defendants' letter is  
22 that it appears that the New York Police Department is  
23 doing an initial review for many documents and then sending  
24 them to the defendants, or defense counsel to then do  
25 another review. And we have significant concerns that that

1  
2 is not going to be sufficient in terms of obtaining the  
3 documents that are necessary and responsive to the  
4 plaintiffs' request. NYPD legal is not signing these  
5 objections, and so, for example, in their June 21 letter,  
6 with respect to responses 22 and 23, for example, these are  
7 the search out documents concerning the Corporation counsel  
8 report and the DOI report. And defendants state that these  
9 documents do exist, they're currently undergoing review by  
10 the NYPD and are expected to be produced to this office,  
11 the Corporation Counsel's office soon, at which point they  
12 will again be reviewed.

13           Respectfully, we have grave concerns about the  
14 idea that there is an initial review happening that's  
15 outside of Corporation Counsel's purview, but, second, that  
16 this two layer track of review is just not going to get the  
17 job done in terms of the compressed schedule that has been  
18 set by Judge McMahon.

19           THE COURT:   And these are documents that were  
20 provided to the Corporation Counsel and DOI, is that what  
21 this is?

22           MS. BICKLEN:   These are documents concerning,  
23 for example, document request 22 is all documents including  
24 communications concerning the December 30, 2020 Corporation  
25 Counsel report, which includes both documents that they

1  
2 produced to the Corporation Counsel in preparing such a  
3 report but also any other communications concerning that  
4 report.

5 THE COURT: And same for DOI.

6 MS. BICKLEN: And that is one example - sorry,  
7 that is the Corporation Counsel number 22, and then we  
8 asked for the same with respect to the DOI report in 23.  
9 But, again, their response in a letter of June 21 is the  
10 first time that they have made clear that, in fact, NYPD is  
11 doing the sort of first analysis and review, and if that is  
12 what is holding up, and if that is what they're doing in  
13 response to other of the requests, that is a significant  
14 problem.

15 MS. WEISS: Your Honor, if I may, just to  
16 clarify what is meant by the NYPD's review, respectfully,  
17 they can't just hand us over a bunch of documents. They  
18 have a responsibility and we have asked them to look  
19 through these documents and make sure that this is, you  
20 know, say, for example, they have a file folder drawer full  
21 of documents, you know, they have - and understanding  
22 likely all on computer but I'm speaking in more of an old-  
23 fashioned sense I guess. They have a responsibility and  
24 we've asked them to make sure that the documents that  
25 they're giving us are, in fact, the documents that were

1 handed over to these entities for their investigations.

2  
3 And another part of the review is, and I want it  
4 clear that they're not holding things back or deciding what  
5 is responsive and what is relevant, but they're also  
6 looking through them because, as I'm sure the Court and all  
7 the parties are aware, there are a lot of very sensitive  
8 documents within the NYPD, and we've asked them to sort of  
9 flag these documents so we know when we are looking at them  
10 as their attorneys and as attorneys for the City, things  
11 that we might have to take a closer review, a closer look  
12 at for privilege or for responsiveness or for relevance.

13 So I just want to make it clear that NYPD legal  
14 or anyone within the NYPD is not making decisions on what  
15 should or should not be produced. That's not what this  
16 review is that's mentioned in our letter. It's a review to  
17 make sure that they're getting us the proper documents.

18 THE COURT: I'm not as concerned about that  
19 aspect as I am about the delay factor. So what, you know,  
20 the word soon is not helpful which is the letter that, the  
21 word that you use in the letter. So what date do you get  
22 these documents or do you have no idea?

23 (pause in proceeding)

24 THE COURT: Ms. Weiss, did we lose you?

25 MS. WEISS: I'm sorry, I'm very sorry. I was

1  
2 saying, and I don't know how much you caught, when I wrote  
3 this letter on Monday, I was not aware that we, in fact,  
4 almost 50,000 documents in our possession, us being the New  
5 York City Law Department. They are undergoing review. So  
6 I believe that those documents are probably encompassed in  
7 these 50,000 documents or at least a good portion of them.

8 THE COURT: You think you have them already?

9 MS. WEISS: I can't - I can't guarantee that we  
10 have every single one, but it looks like we have a lot of  
11 documents from the DOI investigation at the very least.

12 THE COURT: Is there someone who knows more than  
13 you about what's going on? Because (indiscernible).

14 MS. WEISS: Perhaps our e-discovery counsel, Mr.  
15 DiSenso or Ms. Kaufman, have a better idea exactly what  
16 have with respect to those documents?

17 (pause in proceeding)

18 MR. DiSENSO: Hi, this is Mr. DiSenso. You  
19 know, again, these are the same documents we were talking  
20 about before. We have them in our database, as Ms. Weiss  
21 was saying at the beginning of the conference. At this  
22 point, we're trying to determine the proper (indiscernible)  
23 strategy for these documents, what can go out as quickly as  
24 possible --

25 THE COURT: That's not the part I'm asking

1  
2 about. That's not the part I'm asking about. I'm asking  
3 about --

4 MR. DiSENSO: I apologize.

5 THE COURT: No problem. Are you familiar with  
6 Ms. Weiss's letter of June 21?

7 MR. DiSENSO: Unfortunately, Your Honor, I can't  
8 say I am.

9 THE COURT: Okay, so, Ms. Weiss, this is the  
10 problem, I need someone who knows everything. And I think  
11 you should be this person. You write these documents  
12 expect to be produced to this office soon, and it seems  
13 like it is your responsibility to know that, but I think  
14 it's your responsibility to know the answer to that  
15 question which is have they been produced now and are they  
16 in this batch?

17 MS. WEISS: As I said, I believe with respect to  
18 the documents that NYPD produced to Department of  
19 Investigations, yeah, I believe that that is what is in the  
20 set, you know, among other things of course.

21 THE COURT: Okay, so you think that - I mean I  
22 would've thought that Ms. Bicklen said we're really  
23 concerned about the fact that you haven't even gotten these  
24 documents from NYPD, your answer would've been, oh, no, we  
25 have them, don't worry. What wasn't that your answer and

1  
2 is that your answer?

3 MS. WEISS: Because I'm going to give the  
4 answer, yes, we have those documents, don't worry, to the  
5 extent I can without being able to, as I sit here right now  
6 and, you know, as an officer of the court, I do not want to  
7 give incorrect information, but as I sit here now, I cannot  
8 access the database to see exactly what documents are in  
9 there. This is what has been indicated to me, that this  
10 was this part of this huge batch of documents that was sent  
11 over to our office. But I also can't right now, as we sit  
12 here this moment, 100 percent guarantee that, but it is my  
13 strong belief.

14 THE COURT: Okay, well, I mean that's worth  
15 something, but let me just tell you for the future, you  
16 need to have, you know, when you put something in the  
17 letter like this, you need to be able to answer questions  
18 about it and track it, not just for me, but to know what's  
19 going on with the efforts to do all of this, and that has  
20 to reside in someone's know, and if you're the person who  
21 it is, then you need to have all that knowledge, you need  
22 to track each of these requests to see what's going on, how  
23 many documents are involved, what stage they're at. There  
24 should be a chart that's available to you that let's you  
25 know what all these things are and what's being done about

1  
2 them. All right? So for our next conference, do you  
3 understand you have to be able to do?

4 MS. WEISS: Yes, Your Honor.

5 THE COURT: Okay, Ms. Bicklen, should we go  
6 through more of these? Tell me what we should do.

7 MS. BICKLEN: Thank you, Your Honor. At this  
8 point, it might be helpful to inquire as to how many  
9 attorneys are working on this. We have known from some of  
10 the meet and confers with respect to depositions that at  
11 times it's only one attorney from Corporation Counsel who's  
12 available. And if it is the case that only one attorney is  
13 available to review these documents for privilege to  
14 determine when they can be produced, I have grave concerns,  
15 given what we just heard, about the ability to even meet  
16 the promise to start major production.

17 THE COURT: So, Ms. Weiss, I think that's  
18 something that I talked about last time in order to assess,  
19 you know, whatever claims you've made to not having made  
20 much production up until this point, what - and I'm not so  
21 concerned about the tasks, but I'm concerned about a July  
22 31 deadline, how many attorneys are going to be reviewing  
23 these documents and at what pace and what is the plan on  
24 that?

25 MS. WEISS: Well, that is part of what we're



1  
2 trying to determine now. We don't have the staffing at  
3 this moment or the arrangement of staffing I should say to  
4 be able to review tens upon tens of thousands of documents  
5 by July 31. Part of what we're doing is working on  
6 getting, you know, ramping up the staffing to get these  
7 documents reviewed so that we can ensure that we will have  
8 them reviewed and produced in time.

9 THE COURT: Well, this is the first time I've  
10 ever heard you express doubt that you're going to meet the  
11 July 31 deadline.

12 MS. WEISS: Oh, no, we fully intend on doing so,  
13 Your Honor.

14 THE COURT: But you don't have, no one has given  
15 you the staffing to do it.

16 MS. WEISS: It's being worked on as we speak.

17 THE COURT: Okay, well, what I have to tell you  
18 is what I said earlier which is the communication from  
19 Judge McMahon which is either we don't get answers to the  
20 questions or it was insufficient, then the City is putting  
21 itself at risk in terms of how this delayed, the delay is  
22 going to be treated. So I'm not asking you to say anything  
23 about it, but I just want to remind you again that the City  
24 is at risk of preclusion or other sanctions if it hasn't  
25 done the staffing necessary to meet the deadlines on the

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case. You understand that, Ms. Weiss?

MS. WEISS: Understood, Your Honor.

THE COURT: All right, well, I think we need to get more reports. I hate to have, you know, you spend whatever it takes to write these letters, I think it'll be a little easier to write the second one because you can use the template of the first. We're going to have to continue the transparency as long as the plaintiffs aren't getting a large number of documents which they just aren't. We have to understand what's going on. So we're going to have to go to weekly production. You told me the first production is Wednesday, the 30<sup>th</sup>. In the earlier call you told me for some reason Thursday was better for you. Has that gone by the boards?

MS. WEISS: Well, the reason I was saying Wednesday I think that was in part in response to what plaintiffs are saying because we made a small production on Wednesday the 16<sup>th</sup> I believe it was. Thursday is better for the Law Department. We would certainly prefer to do Thursdays if that's an option.

THE COURT: Well, let's start with the 30<sup>th</sup> which is a Wednesday. That's going to be the first one. And then for the next week you can go to Thursday, which would be July 8.

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MS. WEISS: Thank you.

THE COURT: And I think we're going to have to get updates from you on anything that changes with respect to what you wrote in your June 21 letter. So, for example, you say arrest report - I just picked one out for example - the document request number 9 was going to even have certain things produced next week. So in your next letter you're going to say they were produced, presumably, and if not, given an explanation for it. And I think you have to do that for - I think we're going to have to have reports, you know, you're going to have to update this letter, and we're not going to, and I need you to add a section and the section is how many people, how many documents are available for you to review and how many people are working on doing the privilege responsiveness review.

Okay, Ms. Bicklen, should we go through - is there anything more specific we should be going through? What do you propose?

MS. BICKLEN: I can continue, Your Honor. So, for example, with respect to document request 7, seeks a variety of documents related to the incident and the protest at issue. Now, in their June 21 letter, they say they will produce many of these but that the search for U49, the unusual incident or occurrence reports will be

1  
2 unduly burdensome as it encompasses nearly any document  
3 that NYPD employees created regarding the incident.

4 Quite simply, these protests are what are at  
5 issue. The incidents at the protests are what are at  
6 issue. And with just --

7 THE COURT: Before you go any further, before  
8 you go any further, what's a UF49?

9 MS. BICKLEN: It's an unusual incident --

10 MS. WEISS: Your Honor --

11 (interposing)

12 MS. BICKLEN: -- occurrence report.

13 THE COURT: Okay.

14 MS. WEISS: Your Honor, this is Dara Weiss. If  
15 I may add to this, the NYPD considers a UF49, from what I  
16 understand with conversations with the NYPD, it's not only  
17 the actual printed report but pretty much anything that any  
18 NYPD employee writes down anywhere at all about the  
19 incident. You know, and there were, at some of these  
20 incidents, there were hundreds of police officers present,  
21 you know, almost any little thing that they wrote down,  
22 whether it be relevant or not, would be considered part of  
23 a UF49.

24 The finalized report, you know, the official, the  
25 to/from sort of memo report, that we're happy to produce.

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2 I guess it was just in the - we want it to be crystal clear  
3 from the phrasing of plaintiffs' document request that, you  
4 know, absolutely anything that any NYPD employee wrote  
5 about anything regarded to any of these incidents would be  
6 overbroad, overly burdensome, and likely irrelevant.

7 THE COURT: I'm totally lost still. Are you  
8 talking about a logbook entry, Ms. Weiss, is that what you  
9 say is burdensome or is there literally a formal form  
10 called the UF49 and --

11 MS. WEISS: There is --

12 THE COURT: I'm completely confused.

13 MS. WEISS: There is - I'm not sure if there's a  
14 formal form, but there is often like a to/from memo, you  
15 know, often written to a higher-up from someone who was on  
16 the scene saying, you know, this, that, or the other thing  
17 happened. Those types of things are, you know, filed in a  
18 certain way and easily found, and they often describe what  
19 happened at these events, including, you know, arrests that  
20 were made and a number of other things. Those --

21 THE COURT: Those you say you are producing.

22 MS. WEISS: Those we can produce absolutely.

23 But the NYPD --

24 THE COURT: But what is it you can't produce?

25 MS. WEISS: The NYPD also considers, you know,

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2 in the universe of UF49 absolutely, you know, anything that  
3 any NYPD employee writes down anywhere about anything that  
4 happened at these events, whether relevant to the claims in  
5 these lawsuits or not. And it's just, to try to - and it's  
6 not even the officers who were present; if someone  
7 somewhere else happened to jot something down, it would be  
8 incredibly burdensome to try to get these documents, and we  
9 don't even know if we could, you know, if we could even  
10 find everything that's out there.

11 But I think ultimately what would be the  
12 important and relevant part would be these final UF49  
13 unusual occurrence reports.

14 THE COURT: Which is what they asked for. I  
15 don't understand why you would call a logbook entry a UF49,  
16 if that's what you're talking about.

17 MS. WEISS: No, no, I don't think we did. It  
18 wouldn't be a logbook.

19 THE COURT: Well, you just keep saying someone,  
20 anybody writes down anywhere - this is getting a little bit  
21 surreal. Either there's this form UF49 or there isn't, and  
22 I don't know why you're defining it in this broad manner.

23 MS. WEISS: This is after conversations with the  
24 NYPD, this is what they explained to me.

25 THE COURT: You need to get - we're not going to

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2 do this now. I think there's something not making sense  
3 here. I'd like you to get as much information as you can  
4 about what a UF49 is, find some examples of things that  
5 you're talking about, just one, that you're not going to  
6 produce, discuss this with plaintiffs' counsel, and I think  
7 this is not the right time to work this out. So, Ms.  
8 Bicklen, let's go on to something else.

9 MS. BICKLEN: Thank you, Your Honor. I'd like  
10 to turn to document request 15, which seeks all documents  
11 concerning incidents investigated or referred to  
12 investigation to the Civilian Complaint Review Board. And  
13 in their response and there letter of June 21, defendants  
14 claim that they've requested this information from the CCRB  
15 and are waiting a response. But we need specifics on when  
16 that information will be provided and as quickly as  
17 possible.

18 THE COURT: And just to educate me, so this is  
19 for anybody, the CCRB is, you know, it's subject to the  
20 Mayor, it's not in any way independent. Mayor has complete  
21 control over getting their documents and so forth or not?

22 MS. BICKLEN: It is my understanding that  
23 Corporation Counsel has agreed to represent them in this to  
24 produce documents.

25 THE COURT: Are they a separate entity from -

1  
2 that doesn't answer my question. I'm not asking who the  
3 lawyer is. I'm asking who has control over the documents.

4 (interposing)

5 MR. OLIVER: -- Gideon Oliver.

6 THE COURT: The CCRB is assume is not a  
7 defendant in this case. So my question is --

8 MS. BICKLEN: That's right.

9 THE COURT: -- the City of New York is a  
10 defendant. Is the CCRB completely within, the documents of  
11 the CCRB completely in the control of the Mayor of the City  
12 of New York? Ms. Weiss.

13 MS. WEISS: I actually do not know the answer to  
14 that question, Your Honor. All I know is that in this case  
15 or any other case when we are requested or required to  
16 provide documents by the CCRB, we make a request like  
17 anyone else would to the CCRB for documents. And they are  
18 --

19 THE COURT: Like anyone else would, you mean  
20 like a person off the street?

21 MS. WEISS: If a person off the street wanted to  
22 subpoena documents from the CCRB, I'm sure that they could.  
23 I don't know what they would get, but the CCRB --

24 THE COURT: No, Ms. Weiss, I'm trying to  
25 understand what you're - Ms. Weiss, I'm trying to



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understand what you're saying. Are you saying that you  
(indiscernible) same position as anybody else? Because  
that's what I heard you to say.

MS. WEISS: From the way that in my career with  
the New York City Law Department I have been requesting  
documents from the CCRB, I don't know that they are - I  
don't know their exact relation with the City and how they  
are involved or controlled with the City. It was my  
understanding that they were an independent entity of some  
sort. I don't know all the background behind it. But the  
New York City Law Department and the NYPD do not unfettered  
access to their documents. We have to go through a formal  
requesting process.

THE COURT: Okay, well, so, Ms. Bicklen, you  
know, if this was a city agency, a normal city agency, I  
would treat this in one way. It's something else  
apparently, unless you persuade me otherwise, and tell me  
what you think is the right, I mean I don't know if they  
need to be subpoenaed, I don't know, maybe they need to be  
in front of us? I guess is it correct, Ms. Weiss, you're  
representing them right now?

MS. WEISS: I don't know that I'm representing  
them. I don't know that I have any call to represent them.

THE COURT: Well, if they're (indiscernible)

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2 documents, I mean was a document request the appropriate  
3 way to get these documents or did it require a subpoena?

4 MS. WEISS: It did not require a subpoena. We  
5 made a request to the CCRB.

6 THE COURT: No, no, no, I'm talking about the --

7 MS. BICKLEN: Your Honor, the City --

8 THE COURT: I'm talking about the plaintiffs,  
9 you can only make document requests of parties. So did  
10 they properly proceed or not? I mean they can issue a  
11 subpoena tomorrow. It's not terribly hard. Someone has to  
12 be able to say to me here's what's going in the CCRB and  
13 here's their timetable. Are you saying you're not that  
14 person? Because I need that person.

15 MS. WEISS: I can - I personally am not that  
16 person. I can make or have calls made to them tomorrow to  
17 try to find out the, you know, progress that they're  
18 making.

19 THE COURT: Well, I think that's important --

20 MS. WEISS: We have contact --

21 THE COURT: I mean if they're prepared to submit  
22 to the Court's jurisdiction now, great. If they want a  
23 subpoena, we'll do that tomorrow. But they need to, I  
24 think, Ms. Bicklen, it makes sense for them to send you a  
25 letter or whoever's representing them to send you a letter

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2 immediately saying what the status of the request is  
3 because Ms. Weiss is taking the position that she can just  
4 request from them and has to wait. Because they're an  
5 independent agency.

6 MS. WEISS: Your Honor, I just want to clear I  
7 don't know exactly what they are in relation to the City.  
8 I don't know all the ins and outs of their relationship --

9 THE COURT: Okay, Ms. Weiss, this is back to  
10 what I, related to what I said before, which is you need to  
11 be on top of all of these requests. It needs to be one  
12 person, and if it's you, that's great. But you need to  
13 know what's going on at the CCRB, and if your answer is I  
14 have no control, all I can do is find out what they're  
15 doing, then we need to do something else. We need to have  
16 a subpoena so that I can order them to do something. I  
17 know I can order the City to do something, but it sounds  
18 like you're telling me that you have no control over the  
19 CCRB.

20 MS. BICKLEN: Your Honor, this is Molly Bicklen.  
21 With respect, they're a City agency, and defendants have  
22 not taken the position in their responses that they are not  
23 in possession of the documents or not in custody of them  
24 such that we would have to do a subpoena. They're part of  
25 the City charter, and so it's just not clear to me why

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there has to be this process of waiting.

THE COURT: I don't want to wait, I agree with you. I want a letter from, if, Ms. Weiss, you can't do it, I want a letter from the CCRB by Monday that says exactly when these documents are going to be produced. And I don't mean produced to you; I mean produced. Whoever's producing them. Okay, so that needs to be given to the plaintiffs by Monday, Ms. Weiss, do you understand that?

MS. WEISS: Yes, Your Honor.

THE COURT: That's with respect to document request 15. Ms. Bicklen, what's next?

MS. BICKLEN: I think I'll defer to my colleague with respect to the interrogatory.

MR. OLIVER: Your Honor, hi, Gideon Oliver. Sorry that it's so late and we're just getting to the interrogatories. But the letter from the - so the City had three, has done three rounds of interrogatories. They're virtually the same. There's almost no substantive responses being the main problem. The June 21 letter from the City provides no algorithm information about the process that's been deployed. These interrogatories are signed by Ms. Weiss, not any of the individual defendants. We don't know anything about who was asked, which documents were reviewed, which documents are necessary to give

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Payne, et al. versus De Blasio, et al., docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature

*Carole Ludwig*

Date: June 28, 2021